

ORDINANCE NO. 4202

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, TO AMEND CHAPTER 16, LICENSES, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS, BY AMENDING ARTICLE I, IN GENERAL, AND ARTICLE VII, SEXUALLY ORIENTED BUSINESS, AND DELETING ARTICLE XI. TAXICABS AND LIMOUSINES.

WHEREAS, the City of Scottsdale wishes to amend Chapter 16 by amending Art. I. In General, to simplify and expedite appeal procedures if licenses are denied or revoked; by amending Art. VII. Sexually Oriented Businesses, to (1) align with State Code prohibitions against using electronic benefit transfer cards in certain sexually oriented businesses; (2) align with State Code adult services hours of operation; (3) extend the validity of a temporary permit, and (4) update the fee structure to reflect changing Arizona Department of Public Safety fees and the current Scottsdale fee structure; and by deleting Art XI. Taxicabs and Limousines, as the State regulates taxis and limousines; and

WHEREAS, the City Council held a public hearing on May 12, 2015 and considered the amendments to Chapter 16;

THEREFORE BE IT ORDAINED by the Council of the City of Scottsdale as follows:

Section 1. Section 16-6.1. Appeals, is added to Article I, In General, as follows:

ARTICLE I. IN GENERAL.

Sec. 16-6.1. Appeals.

(a) An aggrieved person may appeal the director's denial or revocation of a license. Any appeal of the director's determination shall be made within ten (10) days of the date of the director's notice of denial or revocation. The appeal shall be in writing and state the reasons for the appeal, including supporting evidence. The director may request additional information, and the appellant shall furnish such information within ten (10) days after the director's request.

(b) If the aggrieved person files a timely appeal for a hearing, a hearing shall be set within thirty (30) days of the city's receipt of the appeal or additional information, whichever is later. The city shall give the appellant at least ten (10) days' notice of the time and place of hearing.

(c) If the aggrieved person fails to request a hearing within ten (10) days, the director's decision is final.

Section 2. Subsection (a) of Section 16-7. Hearings, of Article I, In General, is amended as follows:

Sec. 16-7. Hearings.

(a) At the request of the director, the city manager shall appoint a hearing officer to conduct any hearing provided for in this article. ~~A different hearing officer shall be appointed for any appeal from the hearing.~~

Section 3. Subsection (i) of Section 16-7. Hearings, of Article I, In General, is amended as follows:

Sec. 16-7. Hearings.

(i) The hearing officer may rule on the matter at the close of the evidence and argument, but shall enter a ruling within ten (10) working days of the completion of the hearing unless the parties stipulate that additional time is required to render a fair decision. The hearing officer's ruling shall be in writing, signed by the hearing officer and contain the hearing officer's findings in respect to the allegations and the evidence supporting the findings. The hearing officer shall give notice of the ruling as provided in this article. **The hearing officer's decision is final.**

Section 4. Subsection (j) of Section 16-7. Hearings, of Article I, In General, is added as follows:

Sec. 16-7. Hearings.

(j) An aggrieved person or the city may appeal the hearing officer's decision by filing an action in superior court within twenty (20) days after the ruling appealed from. The right to appeal is waived if the appeal is not timely filed.

Section 5. Section 16-10. Revocation hearing, of Article I, In General, is amended as follows:

Sec. 16-10. Revocation hearing.

(a) Section 16-7. Hearings, applies to revocation hearings.

(b) Except as provided in subsection (d) below, any revocation of a license shall be effective when notice is given to the licensee, and:

(1) The time permitted for filing a notice of appeal has expired without a notice of appeal having been filed; or

(2) The revocation has been affirmed following the hearing ~~of a timely filed notice of appeal; or~~

~~(3) The aggrieved person has filed a timely notice of appeal, but has abandoned the appeal prior to any hearing or ruling on the appeal.~~

(c) When a revocation becomes effective, the licensee shall surrender the license to the director immediately and shall no longer conduct any business pursuant to the license.

(d) After a ruling by the hearing officer, the director may declare that the license is revoked immediately, if in the reasonable judgment of the director, the continuation of the licensed activities constitutes an unreasonable danger to the health or safety of any individual or the community in general. A license revoked under this subsection shall be reactivated immediately upon a successful appeal by the aggrieved person.

Section 6. Section 16-11. Appeal procedures, of Article I, In General, is deleted.

Section 7. Section 16-237. Definitions, of Article VII, Sexually Oriented Businesses, is amended to add the definition of *electronic benefit transfer card transaction* in alphabetical order, as follows:

Sec. 16-237. Definitions. Add:

Electronic benefit transfer card transaction means the use of a credit or debit card service, automated teller machine or point-of-sale terminal or access to an online system for the withdrawal of cash assistance provided pursuant to A.R.S. Title 46, Chapter 2, Article 5, or for the processing of a payment for merchandise or a service from cash assistance provided pursuant to A.R.S. Title 46, Chapter 2, Article 5.

Section 8. Subsection (b) of Section 16-244. Grant or denial of license or permit, of Article VII, Sexually Oriented Businesses, is amended as follows:

Sec. 16-244. Grant or denial of license or permit.

(b) Upon receipt of an application for a sexually oriented business manager permit or an adult service provider permit, payment of the required fees and completion of photograph and fingerprinting requirements of this article, the director shall issue to the applicant a temporary permit. Within ~~thirty (30)~~ **sixty (60)** days after issuance of a temporary permit, the director shall mail to the applicant a regular permit or a notice of intent to deny.

Section 9. Subsection (a) of Section 16-247. Adult service business; operating requirements, of Article VII, Sexually Oriented Businesses, is amended as follows:

Sec. 16-247. Adult service business; operating requirements.

(a) A person employed or acting as an adult service provider or manager shall have a valid permit issued pursuant to the provisions of this article. A permit or a ~~certified~~ copy thereof, and a copy of each identification card, for each manager or provider shall be maintained on the premises in the custody of the manager at all times during which a person is serving as a provider or manager on the premises. Such permits and identification cards shall be produced by the manager for inspection upon request by a law enforcement officer or other authorized city official.

Section 10. Subsection (f) of Section 16-247. Adult service business; operating requirements, of Article VII, Sexually Oriented Businesses, is amended as follows:

Sec. 16-247. Adult service business; operating requirements.

(f) Adult services may not be provided ~~during the following hours:~~

(1) ~~With a spirituous liquor license issued under Arizona law, between 2:00 between 3:00 a.m. and 6:00 a.m. on Mondays through Saturdays, and 2:00 a.m. and 10:00 a.m. on Sundays;~~

(2) ~~Without a spirituous liquor license issued under Arizona law, between 1:00 a.m. and 8:00 a.m. on Mondays through Saturdays, and 1:00 a.m. and 12:00 noon on Sundays.~~

Section 11. Subsection (o) of Section 16-247. Adult service business; operating requirements, of Article VII, Sexually Oriented Businesses, is added as follows:

(o) An adult service business shall disable the ability of any automatic teller machines and point-of-sale terminals on the business' premises to accept the electronic benefit transfer card or process an electronic benefit transfer card transaction.

Section 12. Section 16-255. Fees, of Article VII, Sexually Oriented Businesses, is amended as follows:

Sec. 16-255. Fees.

(a) ~~An original application for a sexually oriented business license shall be accompanied by a nonrefundable application fee in the amount of five hundred dollars (\$500.00) and by a license fee in the amount of five hundred dollars (\$500.00). The license fee will be refunded if the license is denied. An application for renewal shall be accompanied by the amount of the license fee.~~

(b) ~~An application for issuance or renewal of an adult service provider permit shall be accompanied by a nonrefundable fee of one hundred dollars (\$100.00).~~

- ~~(c) An application for issuance or renewal of sexually oriented business manager permit shall be accompanied by a nonrefundable fee of one hundred fifty dollars (\$150.00).~~
- ~~(d) A duplicate or certified copy of a license, permit or identification card shall be issued by the director upon payment of a fee of ten dollars (\$10.00).~~
- ~~(e) A fee of twenty five dollars (\$25.00) shall be paid at the time of fingerprinting for each set of fingerprints to be provided for by the director under section 16-240.~~
- (a) The fees related to sexually-oriented business licenses are:
- (1) Initial application fee: Five hundred dollars (\$500.00).
 - (2) Annual license (new or renewal) fee: Five hundred dollars (\$500.00). The license fee will be refunded if the license is denied.
 - (3) Initial application and renewal fee for adult service provider permit: one hundred dollars (\$100.00).
 - (4) Initial application and renewal fee for sexually oriented business manager permit: one hundred fifty dollars (\$150.00).
 - (5) City fingerprinting fee: Ten dollars (\$10.00).
 - (6) State fingerprinting processing fee: As set by the Arizona Department of Public Safety.
 - (7) Duplicate license, if mailed, fee: Ten dollars (\$10.00). There is no fee for a duplicate license, if sent electronically.
 - (8) Duplicate of permit or identification card fee: Ten dollars (\$10.00).
- (b) Payment of all applicable fees is due with the application submission.
- (c) No fees are prorated, transferable or refundable, except as provided in this section and by state law.

Section 13. Article XI, Taxicabs and Limousines, Sections 16-371 through 16-374 are deleted.

Section 14. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the City Council of the City of Scottsdale this 12th day of May, 2015.

ATTEST:

CITY OF SCOTTSDALE, an
Arizona municipal corporation

By: _____
Carolyn Jagger, City Clerk

By: _____
W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

Bruce Washburn, City Attorney
By: Kathe Anderson, Assistant City Attorney